

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
(HONORABLE PETER C. LEWIS)

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Alejandro FERNANDEZ-Rito

Defendant(s)

Criminal Case No. 08cr4206-DMS (PCL)

ORDER FOR VIDEO DEPOSITION OF
MATERIAL WITNESSES RITA
VAZQUEZ-ROSALES AND PEDRO
VALDENEGRO-GUICHO

Upon motion of Attorney Ray Keramati representing the material witnesses mentioned herein, and good cause appearing:

1. The material witnesses, **RITA VAZQUEZ-ROSALES AND PEDRO VALDENEGRO-GUICHO** held in custody in case number **08cr4206** shall be deposed no later than January 8, 2008 at 10:00 in the U.S. Attorney's Office in San Diego, California.

3. All parties shall attend the deposition. The arresting agency shall bring the material witnesses to the deposition. If the defendant in this case is in custody, that defendant shall be brought separately to the deposition and a Marshall shall remain present during the entire proceeding.

4. Defendant's request for discovery shall be granted.

1 5. The United States Attorney's Office shall provide a videotape and audio-tape operator and
2 arrange for a court-certified interpreter to be present for the material witness, if necessary.

3 6. The cost of the interpreter for the material witness will be borne by the court.

4 7. If a defendant needs an interpreter independent of the material witnesses' interpreter (if
5 any), defense counsel will arrange for a court-certified interpreter to be present. The cost of a
6 separate interpreter for the defendant shall be paid by the court.

7 8. A notary is to preside at the depositions in accordance with Rule 28(a), Fed.R.Civ.P. The
8 parties may, by written stipulation, agree to the selection of any state certified notary. In the absence
9 of a written stipulation, the U.S. Attorney's Office shall provide and pay for a notary as set forth in
10 Fed. R. Civ. P. 28(c).

11 9. The deposition shall be videotape and audio-tape recorded. Prior to the conclusion of a
12 deposition, the deponent, or a party, may, for good faith reasons, elect to have the deponent review
13 the videotaped record of his deposition so as to check the recording for errors or omissions and to
14 note any changes. Any errors or changes, and the reasons for making them, shall be stated in writing
15 and such writing shall be signed by the deponent.

16 10. The videotape and audio-tape operator shall select and supply all equipment required to
17 videotape and audiotape the deposition and shall determine all matters of staging and technique,
18 such as number and placement of cameras and microphones, lighting, camera angle, and
19 background. He/she shall determine these matters in a manner that accurately reproduces the
20 appearance of the witnesses and assures clear reproduction of both the witnesses' testimony and the
21 statements of counsel. The witnesses, or any party to the action, may place upon the record any
22 objection to the videotape operator's handling of any of these matters. Such objections shall be
23 considered by the Court in ruling on the admissibility of the video record. All such objections shall
24 be deemed waived unless made promptly after the objector knows, or has reasonable grounds to
25 know, of the basis of such objection.

26 11. The deposition shall be recorded in a fair, impartial, objective manner. The videotape
27 equipment shall be focused on the witness; however, the videotape operator may from time to time
28 focus upon charts, photographs, exhibits or like material being shown to the witness during the

1 deposition.

2 12. Before examination of a witness, the material witnesses' attorney shall state on the video
3 record his name; the date, time and place of the deposition; the name of the witness and the caption
4 of the action; the identity of the parties and the names of all persons present in the deposition room.
5 A notary shall then swear the witness on the video record. Further, at the beginning of the
6 examination by each counsel, the counsel shall identify himself or herself and his or her respective
7 client on the record.

8 13. The videotape and audio-tape operator shall not stop the video or audio-tape recorder
9 after the deposition commences until it concludes, except, however, that any party may request a
10 cessation for a brief recess, which request will be honored unless another party objects and states the
11 basis for said objections on the record. Each time the tape is stopped or started, the operator shall
12 announce the time on the record. If the deposition requires the use of more than one tape, the end of
13 each tape and the beginning of the next shall be announced orally on the video record by the
14 operator.

15 14. Testimonial evidence objected to shall be recorded as if the objection had been overruled
16 and the court shall rule on the objections prior to admitting that portion of the deposition. The party
17 raising the objection(s) shall be responsible for preparing a transcript for the court to consider. All
18 objections to the evidence presented shall be deemed waived unless made during the deposition.

19 15. The party offering the deposition into evidence at trial shall be responsible for providing
20 the court with a transcript of the portions so offered. The transcript will be used in lieu of
21 contemporaneous transcription by the court reporter.

22 16. Copies of all exhibits utilized during the videotaped deposition shall be attached to the
23 videotaped record.

24 17. At the conclusion of a deposition, the Government and defendant will advise the material
25 witnesses' attorneys if they intend to object to the release of the material witnesses. If the parties do
26 not object to the release of material witnesses, the Government will immediately approve the
27 material witnesses' release order. The Government will provide the witnesses with subpoenas for the
28 trial date and a travel fund advance letter.

18. If either party objects to the release of the material witnesses, the objecting party must request in writing a hearing on the issue before the District Court within four business days after the deposition has concluded. At the hearing, the objecting party must be prepared to show why live witness testimony is vital to its case. If, after the hearing, the Court decides to release the material witness(es), the material witness attorney should file the witnesses' release order immediately. Again, the Government must serve the material witnesses with trial subpoenas and a travel fund advance letter before the material witnesses are released from custody.

19. The audio tape shall be turned over to the notary at the conclusion of the deposition along with a certificate signed by the audio-tape operator attesting that it is an accurate and complete record of the deposition.

20. The notary shall file this original tape, along with the certification, with the court in a sealed envelope marked with the caption of the case, the names of the witnesses and the date of the deposition.

21. Upon request by either party, the videotape operator shall provide a copy of the videotaped deposition to the requesting party at the requesting party's expense. After preparing the requested copies, if any, the videotape operator shall turn the original videotape over to the notary along with a certificate signed by the videotape operator attesting that the videotape is an accurate and complete record of the recorded deposition.

22. The notary shall file the original videotape, along with any exhibits offered during the deposition, with the Court in a sealed envelope marked with the caption of the case, the name of the witness and the date of the deposition. To that envelope, the notary shall attach the sworn statement that the videotape is an accurate and complete record of the recorded deposition.

23. Unless waived by the parties, the notary must give prompt notice to all parties of the filing of the videotaped record of the deposition with the Court pursuant to Fed.R.Civ.P.30 (f) (3).

IT IS SO ORDERED.

DATED: December 19, 2008


HON. PETER C. LEWIS
UNITED STATES MAGISTRATE JUDGE